IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 14469 of 2004

Between:

M/s Kalyani Traders, Gandhinagar, Vijayawada rep.by its Proprietor
Sri Chebrolu Srinivasa Rao, S/o Venkaiah, aged 41 years

..... PETITIONER

AND

1 The Assistant Commissioner of Commercial Tax Officer (INT) O/o Deputy Commissioner of Commercial Taxes,
Yanamalakuduru, Vijayawada-II Division, Vijayawada
2 The Deputy Commercial Taxes Officer, Satyanarayanapuram Circle,
Yanamalakuduru, Vijayawada
3 The Deputy Commercial Taxes Officer, Sitaramapuram Circle,
Yanamalakuduru, Vijayawada
4 The Branch Manager, Bank of India, Vijayawada

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction in the nature of Writ of Mandamus declaring the action of the 1st respondent namely the Assistant Commissioner of Commercial Taxes (INT), Vijayawada - II Division, Vijayawada in obtaining two cheques bearing numbers 757334 and 757336 on 29-07-2004 in favour of the Deputy Commercial Tax Officer, Sitaramapuram Circle, for Rs,58,970/- and Rs.1,17,940/- towards unassessed and undemanded taxes and compounding fees on the allegation of artificially estimated stock variation from the accountant of the

petitioner pursuant to the notice of 29-7-2004 in Ref.No.Nil and proceedings of 29-7-2004 in Ref.No.Nil as illegal, without authority of law, improper, unjust and contrary to the provisions of the APSTG Act, 1957 and also the judgement of this Hon'ble Court in 26 APSTJ 91, 119 STC 52 and 33 APSTJ 249 as also violative of principles of natural justice and direct the authorities to return the two cheques and grant such other relief/reliefs as are deemed fit and proper in circumstances of the case

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following:

THE HONOURABLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HONOURABLE SRIJUSTICE C.V. RAMULU

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WRIT PETITION No.14469 of 2005

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ORDER: (Per BRSR,J)

Concededly, the subject matter that arises for consideration in this writ petition is squarely covered by the judgment rendered by this Court in ***AMBICA LAMP HOUSE, RAJAHMUNDRY*** v . ***COMMERCIAL TAX OFFICER (INT)-I ENFORCEMENT, HYDERABAD***.

Following the said decision, this writ petition is also disposed of in terms of the said judgment.

However, it is made clear that the evidence or material, if any, gathered by the Commercial Tax Department during the course of investigation, can always be utilized for proceeding further in the matter in accordance with the provisions of the A.P. General Sales Tax Act and the Rules framed thereunder.

However, it is brought to our notice by the learned Special Standing Counsel for the Department that the petitioner itself issued instructions to the bank to stop the payment after issuing the cheques to the Department. The cheques presented by the Department were accordingly dishonoured. The question of refund of any tax does not arise since no amounts have been realized by the Department under the cheques issued by the petitioner.

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B. SUDERSHAN REDDY, J.

Date: 27/04/2005

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C.V. RAMULU, J.

GS/GRR

To

1 The Assistant Commissioner of Commercial Tax Officer (INT)
O/o Deputy Commissioner of Commercial Taxes,
Yanamalakuduru, Vijayawada-II Division, Vijayawada
2 The Deputy Commercial Taxes Officer, Satyanarayanapuram
Circle, Yanamalakuduru, Vijayawada
3 The Deputy Commercial Taxes Officer, Sitaramapuram Circle,
Yanamalakuduru, Vijayawada
4. 2 CCs to G.P. for commercial Tax, High court Buildings,
Hyderabad (OUT)

5. 2 C.D. copies.